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cc: order, docket, remand letter to  
Los Angeles Superior court, Northwest  
District, Van Nuys, Case No. LC 094606

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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11 STEVEN SHKOLNIK, an ) Case No. CV 11-07828 DDP (SSx)  
individual, )  
12 Plaintiff, ) **ORDER GRANTING MOTION TO REMAND**  
13 )  
14 v. )  
15 CITIMORTGAGE, INC., a ) [Docket No. 11]  
16 California corporation; CR )  
TITLE SERVICES, INC., a )  
17 California corporation;  
VERICREST FINANCIAL INC., a )  
California corporation; LSF7 )  
BERMUDA NPLI TRUST, )  
18 Defendants. )  
19 \_\_\_\_\_ )  
20 )

21 The court finds itself confronted with an unusual scenario.  
22 Plaintiff filed a "Request to Remand" as to two of the Defendants  
23 in this case, based on the removing Defendants' failure to properly  
24 join those two Defendants in the Petition for Removal. The two  
25 non-joining Defendants ask the court to remand the entire case,  
26 because they "did not and do not consent to the removal." The  
27 removing Defendants state that they "consent to the remand of this  
28 action if the court so orders," but note that the remand request is

1 untimely under 28 U.S.C. § 1447(c). As set forth below, the court  
2 concludes that: 1) Defendants' removal was improper; 2) the  
3 statutory remand deadline is appropriately tolled here; and  
4 therefore 3) the entire matter should be remanded to state court.

5 **I. BACKGROUND**

6 On August 18, 2011, Plaintiff Steven Shkolnik filed suit in  
7 Los Angeles County Superior Court against Defendants Citimortgage,  
8 Inc., CR Title Services, Inc., Vericrest Financial, Inc., and LSF7  
9 Bermuda NPLI Trust, alleging state and federal violations related  
10 to Defendants' foreclosure on his property. (Compl. at 1-2.) On  
11 September 21, 2011, Defendants Citimortgage, Inc. and CR Title  
12 Services, Inc. (collectively "Removing Defendants") filed a  
13 Petition for Removal, based on federal question jurisdiction.  
14 (Pet. for Removal at 2.) Removing Defendants, however, made no  
15 mention of Defendants Vericrest Financial, Inc. or LSF7 Bermuda  
16 NPLI Trust (collectively, "Non-Consenting Defendants") in the  
17 Petition.

18 Accordingly, on October 31, 2011, Plaintiff Steven Shkolnik  
19 filed a Request to Remand ("Request"), but only as to the Non-  
20 Consenting Defendants. Plaintiff asked the court to remand  
21 pursuant to 28 U.S.C. § 1447(c) ("Section 1447(c)'), because the  
22 Non-Consenting Defendants had failed to join in the Petition for  
23 Removal.<sup>1</sup> (Req. at 3-4.) The court ordered that Plaintiff's  
24 Request be considered an Ex Parte Application, and that any

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25  
26 <sup>1</sup> At the same time, Plaintiff also filed a First Amended  
27 Complaint ("FAC"), in pro se. The FAC does not name Non-Consenting  
28 Defendants, presumably because Plaintiff expected the court to  
remand as to those Defendants. The FAC also adds Defendant Lisa  
Markham, who has joined Removing Defendants in their papers.  
Neither of these changes impact the court's analysis.

1 opposition be filed by November 16, 2011. On that date, the Non-  
2 Consenting Defendants filed a Response to Plaintiff's Request  
3 ("Response"), agreeing that the matter was improperly removed  
4 without their consent, and therefore asking the court to remand the  
5 entire matter. (Resp. at 3.) The Removing Defendants also  
6 responded on November 16, 2011, with a Limited Opposition to  
7 Plaintiff's Motion to Remand ("Opposition"). The Removing  
8 Defendants concede the removal defect and consent to remand of the  
9 entire matter "if the court so orders." They note, however, that  
10 Plaintiff filed his Request to Remand outside of the 30-day  
11 deadline imposed by Section 1447(c). (Opp'n at 2, 4.)

12 Defendants also describe relevant out-of-court actions by the  
13 parties. In particular, Removing Defendants claim that they failed  
14 to include Non-Consenting Defendants in the Petition for Removal  
15 because they "were unaware that [Non-Consenting] Defendants had  
16 been served with the state court complaint." (Opp'n at 2.) As a  
17 result, Non-Consenting Defendants did not learn of the Petition for  
18 Removal until September 28, 2011, when they contacted the state  
19 court to schedule a hearing date. (Resp. at 2.) Non-Consenting  
20 Defendants then contacted Removing Defendants, explaining that they  
21 would not consent to removal. Accordingly, Removing Defendants  
22 prepared an Application and Stipulation to Remand Action to State  
23 Court ("Stipulation"), which they sent to Non-Consenting Defendants  
24 on October 20, 2011. (Resp. at 2, Exs. 1-2; Opp'n at 2.) On  
25 November 7, 2011, Non-Consenting Defendants signed and returned the  
26 Stipulation to Removing Defendants, who then sent it Plaintiff for  
27 his signature. Plaintiff responded on November 9, 2011, explaining  
28 that he would not sign the Stipulation, because he had already

1 "filed a motion to remand" the Non-Consenting Defendants, and  
 2 preferred "to move forward against [Removing Defendants] in Federal  
 3 court." (Resp. at 2-3, Exs. 3-4; Opp'n at 2.)

4 **II. DISCUSSION**

5 Courts "strictly construe the removal statute against removal  
 6 jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.  
 7 1992). Removal is governed by substantive and procedural  
 8 requirements, and remand may be ordered for lack of jurisdiction or  
 9 for "any defect in removal procedure." 28 U.S.C. § 1447(c).  
 10 Generally, there is a strong presumption in favor of  
 11 remand. See Sanchez v. Monumental Life Ins. Co., 102 F.3d 398,  
 12 403-04 (9th Cir. 1996). However, "a motion to remand the case on  
 13 the basis of any defect other than lack of subject matter  
 14 jurisdiction must be made within 30 days after the filing of the  
 15 notice of removal." 28 U.S.C. § 1447(c).

16 Here, there is no dispute that removal was defective, because  
 17 all defendants did not consent to removal. See Proctor v. Vishay  
Intertechnology Inc., 584 F.3d 1208, 1224 (9th Cir. 2009);  
 19 Aguon-Schulte v. Guam Election Comm'n, 469 F.3d 1236, 1240 (9th  
 20 Cir. 2006). However, because this is a non-jurisdictional  
 21 "defect" in a removal procedure" under Section 1447(c), it is  
 22 subject to the statute's 30-day motion-filing deadline. Aguon-  
 23 Schulte, 469 F.3d at 1240. Relevant here, Plaintiff filed his  
 24 Request to Remand forty days after the Petition for Removal, and  
 25 Non-Consenting Defendants filed their Response also asking for  
 26 remand sixteen days later.

27 Nonetheless, the "thirty-day deadline is not absolute." Olson  
 28 v. Lui, Civ. Nos. 11-00396 & 11-00614, 2011 WL 5330445, at \*6 (D.

1 Haw. Nov. 4, 2011). Rather, "[s]tatutory filing deadlines are  
2 generally subject to the defenses of waiver, estoppel, and  
3 equitable tolling." United States v. Locke, 471 U.S. 84, 94 n.10  
4 (1985); see also Roe v. O'Donohue, 38 F.3d 298, 302 (7th Cir. 1994)  
5 ("We may assume that the 30-day period [under Section 1447(c)] is  
6 subject to equitable tolling and estoppel . . . ."), abrogated on  
7 other grounds by Murphy Bros. v. Michetti Pipe Stringing, Inc., 526  
8 U.S. 344 (1999); Engel v. 34 E. Putnam Ave. Corp., 552 F. Supp. 2d  
9 291, 294 (D. Conn. 2008) (concluding that Section 1447(c)'s "30-day  
10 time limit is not jurisdictional," and therefore is subject to  
11 waiver). Accordingly, numerous district courts have in fact tolled  
12 Section 1447(c)'s thirty-day deadline. See, e.g., Olson, 2011 WL  
13 5330445, at \*8; Fed. Ins. Co. v. Tyco Int'l Ltd., 422 F. Supp. 2d  
14 357, 371 (S.D.N.Y. 2006); Caggiano v. Pfizer, Inc., 384 F. Supp. 2d  
15 689, 691-92 (S.D.N.Y. 2005); Byfield v. Niaz, No. 00 Civ. 6572,  
16 2001 WL 25705, at \*2 (S.D.N.Y. Jan. 10, 2001); Doyle v. Staples,  
17 No. 99-CV-6062, 2000 WL 194685, at \*2 (E.D.N.Y. Feb. 18, 2000).

18 Here, in the interest of the Non-Consenting Defendants, the  
19 court finds the 30-day deadline equitably tolled from the filing of  
20 the Petition for Removal, at least through to the date Plaintiff  
21 declined to sign the Stipulation to Remand. As discussed, Removing  
22 Defendants admit that they failed to notify Non-Consenting  
23 Defendants of the Petition for Removal. When Non-Consenting  
24 Defendants learned of the Petition, one week later, they informed  
25 Removing Defendants that they did not consent to removal. Because  
26 Removing Defendants then agreed to prepare the Stipulation to  
27 Remand, and because Plaintiff had made the initial choice to bring  
28 suit in state court, Non-Consenting Defendants reasonably assumed

1 that all parties would sign the Stipulation and that the matter  
2 would be remanded without need for a motion. Non-Consenting  
3 Defendants then waited for and signed the Stipulation to Remand  
4 within reasonable time periods, approximately three weeks and two  
5 weeks, respectively. It was not until two days after, when  
6 Plaintiff declined to sign the Stipulation, that Non-Consenting  
7 Defendants might have first learned of the need to file a motion to  
8 remand, at which point equitable tolling would stop. Because  
9 Plaintiff had already filed his Request to Remand by this time, and  
10 because Non-Consenting Defendants filed their Response also asking  
11 for remand within one week of Plaintiff's refusal to stipulate, the  
12 cumulative "motion" now before the court was filed well within  
13 Section 1447(c)'s 30-day time limit.

14 Finally, the court must deny Plaintiff's request to remand  
15 only the Non-Consenting Defendants. As the Seventh Circuit has  
16 explained:

17 Cases are removed, or not, as units; either all defendants  
18 agree to removal or none does. Hanrick v. Hanrick, 153  
19 U.S. 192 (1894); Torrence v. Shedd, 144 U.S. 527 (1892).  
20 After removal, the case either stays in federal court or  
returns to state court as a unit (subject to the district  
court's option under 28 U.S.C. § 1441(c) to remand 'a  
separate and independent [nonremovable] claim').

21 In re Mut. Fund Market-Timing Litig., 468 F.3d 439, 444 (7th Cir.  
22 2006).<sup>2</sup>

23 **III. CONCLUSION**

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25 <sup>2</sup> In his Request, Plaintiff also asks the court to award him  
26 "costs and actual expenses, including attorney's fees, for having  
27 to file this motion." (Req. at 5.) The court declines to do so.  
28 The court has found equitable tolling of Section 1447(c)'s filing  
deadline on behalf of Non-Consenting Defendants. Plaintiff, to the  
contrary, had no basis for filing his Request to Remand more than  
thirty days after removal. Under the circumstances, the court  
finds it inappropriate to award any costs or fees.

1       For the foregoing reasons, the Court GRANTS the motion and  
2 remands the entire matter to state court. In addition, the  
3 Scheduling Conference set for December 12, 2011 and docket numbers  
4 15 and 19 are VACATED.

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6 IT IS SO ORDERED.

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9 Dated: December 1, 2011

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DEAN D. PREGERSON  
United States District Judge